IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1356 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLABEN DHIRAJLAL VORA

Versus

AMRUTLAL HARGOVIND MAKWANA

Appearance:

1. Civil Revision Application No. 1356 of 1996

M/S THAKKAR ASSOC. for Petitioner No. 1-3

NOTICE SERVED for Respondent No. 1,3-5

MR AJ DESAI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/10/2004

ORAL JUDGEMENT

The petitioners have filed present Civil Revision Application under Section 29 (2) of the Bombay Rent Act,

challenging the order passed by the Assistant Judge, Surendranagar in Civil Appeal No.60/1992, by which he has confirmed the decree for possession passed by the trial Court in Regular Civil Suit No.222/1987.

2) The respondent-trust has instituted a suit being Civil Suit No.222/1987 before the Civil Judge (J.D.) at Surendranagar. The said suit was filed against the defendants (present petitioners) on the ground of arrears of rent as well as on the ground of nonuser of the suit premises.

3) The trial Court has negatived the claim of the plaintiff regarding arrears of rent, however, the trial Court has decreed the suit on the ground of nonuser of the suit premises and accordingly, the said suit was decreed as per the provisions of Section 13 (1) (k) of the Bombay Rent Act. The defendants of the said suit, thereafter, carried the matter further by filing an appeal being Civil Appeal No.60/1992. The learned Assistant Judge, Surendranagar, by impugned order dated 24th June, 1996, dismissed the aforesaid appeal, against which the petitioners (original defendants) have preferred present Civil Revision Application under Section 29 (2) of the Bombay Rent Act.

4) Learned advocate for the petitioners submitted that the finding of fact given by the Courts below about nonuser of the suit premises is not proper, as according to him, the defendant No.1, who is petitioner No.1 herein, was using the suit premises at the relevant time.

5) So far as question about nonuser of suit premises is concerned, both the Courts below have considered the evidence on record and reached to the finding of fact that the suit premises is not used by the tenant and accordingly, decree is passed on the ground of nonuser.

6) In this connection reference is required to be made to Section 13 (1) (k) of the Bombay Rent Act, which reads as under :

> "S.13 (1) Notwithstanding anything contained in this Act [but subject to the provisions of section 15], a landlord shall be entitled to recover possession of any premises if the Court is satisfied -
>
> (k) that the premises have not been used without reasonable cause for the purpose for which they were let for a continuous period of six months

immediately preceding the date of the suit ; "

7) The learned appellate Judge has dealt with the question of nonuser in paragraphs 7 and 8 of his judgement. It is an admitted fact that the husband of the present petitioner No.1 and father of petitioners No.2 and 3, namely, Dhirajlal Vora was serving in Kanti Cotton Mill and the said mill was closed in the year 1981 and therefore, he went to Bombay with his family members. On appreciation of evidence, the appellate Court has found that, thereafter all the defendants have started living at Bombay and said Dhirajlal has also expired at Bombay. In paragraph 7 of its judgement, the appellate Court has observed that defendant No.1-Kamlaben Dhirajlal Vora has also admitted in her evidence at Exh.94 that her husband was serving in Kanti Cotton Mill at Surendranagar and as the said mill was closed somewhere in the year 1981, her husband has started residing at Bombay with his family members. She has admitted that she is also residing at Bombay since last 15 years. The appellate Court has considered the fact that the defendant No.1 is having gas connection at Surendranagar, however, according to the appellate Judge no gas connection card or receipts are produced on record. However, some grocery bills were produced on record but according to the appellate Judge such bills, itself, would not suggest that the defendants are staying in the suit premises, as such bills can be procured at any time. Even no electric bills were produced on record by the defendants to substantiate their say that they were residing in the suit premises during the relevant period.

8) On behalf of the landlord, an independent witness was examined at Exh.48, who is residing in the nearby vicinity. Said witness has also stated in his evidence that the defendants are residing at Bombay since last ten years and the rented premises is kept closed since last eight years.

9) The trial Court has found that even the summons of suit was served on the defendants at Bombay, such observation is made by the trial Court in para 13 of its order.

10) Considering the totality of the evidence, both the Courts have reached the finding of fact that the suit premises is not used by the defendant for the purpose of which it was let out to them. This finding of fact recorded by both the Courts below cannot be reappreciated by this Court, as this Court is not exercising appellate

powers while deciding a revision under Section 29 (2) of the Bombay Rent Act. It cannot be said that the Courts below have committed any error of law in reaching the conclusion about nonuser of the suit premises. Even otherwise, if the evidence is to be reappreciated then also no other view except the one taken by the Courts below is possible, hence, no interference of this Court is called for in this Civil Revision Application.

11) In view of above discussion, I do not find any substance in the present Civil Revision Application, and the same is rejected. Rule is discharged. No costs. Interim relief stands vacates.

(P.B.Majmudar,J.)
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